

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-0494.01 Ed DeCecco x4216

SENATE BILL 20-168

SENATE SPONSORSHIP

Hansen and Pettersen,

HOUSE SPONSORSHIP

Valdez A.,

Senate Committees

Transportation & Energy
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING TAX POLICY THAT PROMOTES ENVIRONMENTAL**
102 **SUSTAINABILITY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill modifies the community solar garden property tax exemption, which exempts the percentage of alternating current electricity capacity of a community solar garden that is attributed to subscribers who are tax exempt, by:

- ! Extending the exemption for 5 more property tax years (**section 1** of the bill); and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

! Expanding the exemption to apply to a community solar garden that is a solar energy facility, which is assessed statewide (**section 2**).

For the period that the exemption is extended, the state will reimburse local governments for the lost property tax revenues that result from the newly expanded credit. These payments will be made from the sustainable energy tax policy fund, which consists of the increased revenue as a result of changes to the coal tax made in **sections 4 and 5**, and the general fund if there is insufficient money in the fund.

In years when the state is required to refund excess state revenues under section 20 of article X of the state constitution (TABOR), the reimbursements to the counties are a TABOR refund mechanism. This refund mechanism only applies after the refunds made to counties for the reimbursements for the senior homestead exemption (**sections 1 and 6**).

Locally assessed solar energy facilities are valued by assessors using valuation procedures developed by the property tax administrator (administrator). Currently, the administrator is required to utilize a cost approach to valuation for all renewable energy facilities. This valuation currently involves a "tax factor" based on a 20-year period. Section 2 extends this period by 10 years and specifies that after the 30 years, a tax factor is not applied and the taxable value shall not exceed the depreciated value floor calculated using the cost basis method. Under **section 3**, the administrator will be required to utilize the income approach used for solar energy facilities for a renewable energy facility that would qualify as a solar energy facility if it generated more energy, so that all similar facilities will be valued in the same manner.

For purposes of the severance tax on coal, beginning July 1, 2021, **section 4** eliminates the quarterly exemption on the first 300,000 tons of coal and the credit for coal produced from underground mines and for the production of lignitic coal. Prior to June 30, 2026, the additional severance tax that results from these changes will be credited to the sustainable energy policy fund, and thereafter it is allocated like other severance tax revenue (section 5).

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-3-118.7, **amend**
3 (2); and **add** (1)(c), (3), (4), and (5) as follows:

4 **39-3-118.7. Community solar garden - partial business**
5 **personal property tax exemption - reimbursement to local**
6 **governments - sustainable energy tax policy fund - creation - refund**

1 **of excess state revenues - legislative declaration - definitions.** (1) As
2 used in this section, unless the context otherwise requires:

3 (c) "TABOR REFUND AMOUNT" MEANS THE STATE REVENUES IN
4 EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY
5 SECTION 20 (7)(a) OF ARTICLE X OF THE STATE CONSTITUTION THAT THE
6 STATE IS REQUIRED TO REFUND UNDER SECTION 20 (7)(d) OF ARTICLE X OF
7 THE STATE CONSTITUTION.

8 (2) For property tax years commencing on and after January 1,
9 2015, but before January 1, ~~2021~~ 2026, there is exempt from the levy and
10 collection of property tax the percentage of alternating current electricity
11 capacity of a community solar garden that is attributed to residential or
12 governmental subscribers, or to subscribers that are organizations that
13 have been granted property tax exemptions pursuant to sections 39-3-106
14 to 39-3-113.5.

15 (3) (a) NO LATER THAN JUNE 1, 2022, AND JUNE 1 OF EACH OF THE
16 NEXT FOUR YEARS THEREAFTER, A COUNTY TREASURER SHALL REPORT TO
17 THE STATE TREASURER THE TOTAL AMOUNT OF PROPERTY TAX REVENUES
18 LOST FOR THE PRIOR PROPERTY TAX YEAR BY LOCAL GOVERNMENTS
19 WITHIN THE COUNTY AS A RESULT OF THE EXEMPTION ALLOWED UNDER
20 THIS SECTION AND SECTION 39-4-102 (1.5)(e)(I). IF NO EXEMPTIONS WERE
21 ALLOWED IN THE COUNTY, THE TREASURER IS NOT REQUIRED TO SUBMIT
22 A REPORT.

23 (b) (I) NO LATER THAN JUNE 15, 2022, AND JUNE 15 OF EACH OF
24 THE NEXT FOUR YEARS THEREAFTER, THE STATE TREASURER SHALL ISSUE
25 A WARRANT TO A COUNTY TREASURER THAT IS EQUAL TO THE AMOUNT
26 SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION MINUS THE AMOUNT
27 SPECIFIED IN SUBSECTION (3)(c) OF THIS SECTION. THE STATE TREASURER

1 SHALL PAY THE REIMBURSEMENT FROM THE SUSTAINABLE ENERGY TAX
2 POLICY FUND CREATED IN SUBSECTION (4) OF THIS SECTION, OR THE
3 GENERAL FUND IF THERE IS INSUFFICIENT MONEY IN THE SUSTAINABLE
4 ENERGY TAX POLICY FUND.

5 (II) A TREASURER SHALL DISTRIBUTE THE MONEY RECEIVED FROM
6 THE STATE TREASURER UNDER SUBSECTION (3)(b)(I) OF THIS SECTION TO
7 THE LOCAL GOVERNMENTS WITHIN THE TREASURER'S COUNTY IN
8 PROPORTION TO THE AMOUNT LOST BY EACH LOCAL GOVERNMENT NO
9 LATER THAN JUNE 30 AFTER THE MONEY WAS RECEIVED.

10 (c) A TREASURER SHALL NOTIFY THE STATE TREASURER IF AN
11 EXEMPTION OR PART OF AN EXEMPTION WAS ERRONEOUSLY ALLOWED
12 UNDER THIS SECTION OR SECTION 39-4-102 (1.5)(e)(I). THE STATE
13 TREASURER SHALL REDUCE THE NEXT PAYMENT TO THE COUNTY BY THIS
14 AMOUNT.

15 (4)(a) THE SUSTAINABLE ENERGY TAX POLICY FUND, REFERRED TO
16 IN THIS SUBSECTION (4) AS THE "FUND", IS HEREBY CREATED IN THE STATE
17 TREASURY. THE FUND CONSISTS OF MONEY CREDITED TO THE FUND IN
18 ACCORDANCE WITH SECTION 39-29-108 (2)(d)(I). THE STATE TREASURER
19 SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT
20 AND INVESTMENT OF MONEY IN THE SUSTAINABLE ENERGY TAX POLICY
21 FUND TO THE FUND.

22 (b) EXCEPT AS SET FORTH IN SUBSECTION (4)(c) OF THIS SECTION,
23 THE MONEY IN THE FUND IS ONLY AVAILABLE FOR THE STATE TREASURER
24 TO MAKE PAYMENTS TO COUNTIES UNDER THIS SECTION. THE GENERAL
25 ASSEMBLY SHALL NOT APPROPRIATE MONEY FROM THE FUND FOR ANY
26 PURPOSE.

27 (c) ON JUNE 30, 2022, AND JUNE 30 OF EACH OF THE NEXT FOUR

1 YEARS THEREAFTER, THE STATE TREASURER SHALL TRANSFER ANY MONEY
2 IN THE FUND AS OF THAT DATE TO THE JUST TRANSITION CASH FUND,
3 CREATED IN SECTION 8-83-504 (1).

4 (5) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES
5 THAT:

6 (I) ALTHOUGH THE EXPIRING EXEMPTIONS ALLOWED BY THIS
7 SECTION ARE EXEMPTIONS FROM LOCAL GOVERNMENT PROPERTY TAXES,
8 THE EXEMPTIONS WILL ONLY BE EXTENDED IF THE STATE REIMBURSES
9 LOCAL GOVERNMENTS FOR THE NET AMOUNT OF PROPERTY TAX REVENUES
10 LOST AS A RESULT OF THE EXEMPTIONS IN THOSE YEARS;

11 (II) THE STATE, THEREFORE, BEARS THE FULL COST OF THE
12 EXEMPTIONS;

13 (III) THE BENEFICIARY OF THESE PAYMENTS IS REALLY THE
14 TAXPAYERS THAT OWN AND OPERATE THE COMMUNITY SOLAR GARDENS;

15 (IV) SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION
16 AUTHORIZES THE STATE TO USE ANY REASONABLE METHOD TO MAKE
17 REQUIRED REFUNDS OF EXCESS STATE REVENUES; AND

18 (V) THE PAYMENT BY THE STATE TO REIMBURSE LOCAL
19 GOVERNMENTS FOR THE NET AMOUNT OF PROPERTY TAX REVENUES LOST
20 AS A RESULT OF THE PROPERTY TAX EXEMPTIONS ALLOWED BY THIS
21 SECTION, WHICH EXEMPTIONS DIRECTLY REDUCE THE TAX LIABILITY OF
22 THE TAXPAYERS THAT OPERATE COMMUNITY SOLAR GARDENS IN THE
23 STATE, IS A REASONABLE METHOD OF REFUNDING EXCESS STATE
24 REVENUES.

25 (b) FOR ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY
26 1, 2020, IF THE TABOR REFUND AMOUNT FOR A FISCAL YEAR EXCEEDS
27 THE AMOUNT REFUNDED THROUGH SECTION 39-3-209, THEN SOME OR ALL

1 OF THE REIMBURSEMENTS REQUIRED BY SUBSECTION (3) OF THIS SECTION
2 MADE IN THE FOLLOWING STATE FISCAL YEAR ARE A REFUND OF STATE
3 REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING
4 IMPOSED BY SECTION 20 (7)(a) OF ARTICLE X OF THE STATE
5 CONSTITUTION. THE AMOUNT SO REFUNDED IS EQUAL TO THE LESSER OF:

6 (I) ALL REIMBURSEMENTS PAID BY THE STATE TREASURER AS
7 REQUIRED BY SUBSECTION (3) OF THIS SECTION; OR

8 (II) AN AMOUNT EQUAL TO THE TABOR REFUND AMOUNT MINUS
9 THE AMOUNT REFUNDED UNDER SECTION 39-3-209 FOR THE STATE FISCAL
10 YEAR.

11 **SECTION 2.** In Colorado Revised Statutes, 39-4-102, **amend**
12 (1.5)(b)(IV); and **add** (1.5)(e) as follows:

13 **39-4-102. Valuation of public utilities - definitions.** (1.5) The
14 administrator shall determine the actual value of a small or low impact
15 hydroelectric energy facility, a geothermal energy facility, a biomass
16 energy facility, a wind energy facility, or a solar energy facility as
17 follows:

18 (b) (IV) As used in this ~~paragraph (b)~~, SUBSECTION (1.5)(b), "tax
19 factor" means a factor annually established by the administrator. FOR
20 PROPERTY TAX YEARS COMMENCING PRIOR TO JANUARY 1, 2020, the tax
21 factor ~~shall be~~ IS a number that when applied to the selling price at the
22 interconnection meter results in approximately the same tax revenue over
23 a twenty-year period on a nominal dollar basis that would have been
24 collected using the cost basis method of taxation as determined by the
25 administrator for a renewable energy facility pursuant to ~~paragraph (c) of~~
26 ~~subsection (1)~~-SUBSECTION (1)(e) of this section. FOR PROPERTY TAX
27 YEARS COMMENCING ON OR AFTER JANUARY 1, 2020, THE TAX FACTOR IS

1 A NUMBER THAT WHEN APPLIED TO THE SELLING PRICE AT THE
2 INTERCONNECTION METER RESULTS IN APPROXIMATELY THE SAME TAX
3 REVENUE OVER A THIRTY-YEAR PERIOD ON A NOMINAL DOLLAR BASIS
4 THAT WOULD HAVE BEEN COLLECTED USING THE COST BASIS METHOD OF
5 TAXATION AS DETERMINED BY THE ADMINISTRATOR FOR A RENEWABLE
6 ENERGY FACILITY PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION. FOR
7 EACH TAX YEAR FOLLOWING THIS THIRTY-YEAR PERIOD, A TAX FACTOR IS
8 NOT APPLIED AND THE TAXABLE VALUE SHALL NOT EXCEED THE
9 DEPRECIATED VALUE FLOOR CALCULATED USING THE COST BASIS METHOD.
10 For a renewable energy facility that begins generating energy before
11 January 1, 2012, the administrator shall include only the cost of all
12 property required to generate and deliver renewable energy to the
13 interconnection meter that does not exceed the cost of property required
14 to generate nonrenewable energy. For a renewable energy facility that
15 begins generating energy on or after January 1, 2012, the administrator
16 shall include only the cost of all property required to generate and deliver
17 renewable energy to the interconnection meter that does not exceed the
18 cost of property required to generate and deliver nonrenewable energy to
19 the interconnection meter.

20 (e) (I) FOR PROPERTY TAX YEARS ON OR AFTER JANUARY 1, 2020,
21 BUT PRIOR TO JANUARY 1, 2026, FOR A COMMUNITY SOLAR GARDEN THAT
22 IS A SOLAR ENERGY FACILITY, THE ADMINISTRATOR SHALL NOT CONSIDER
23 THE PERCENTAGE OF ALTERNATING CURRENT ELECTRICITY CAPACITY THAT
24 IS ATTRIBUTED TO RESIDENTIAL OR GOVERNMENTAL SUBSCRIBERS, OR TO
25 SUBSCRIBERS THAT ARE ORGANIZATIONS THAT HAVE BEEN GRANTED
26 PROPERTY TAX EXEMPTIONS PURSUANT TO SECTIONS 39-3-106 TO
27 39-3-113.5.

1 (II) WHEN REPORTING THE VALUE OF A SOLAR ENERGY FACILITY
2 TO A COUNTY, THE ADMINISTRATOR SHALL IDENTIFY THE AMOUNT THAT
3 WAS EXEMPTED FROM THE VALUE OF THE SOLAR ENERGY FACILITY UNDER
4 SUBSECTION (1.5)(e)(I) OF THIS SECTION, IF ANY. THE ADMINISTRATOR
5 SHALL NOTIFY THE COUNTY IF AN EXEMPTION OR PART OF AN EXEMPTION
6 WAS ERRONEOUSLY ALLOWED.

7 (III) AS USED IN THIS SUBSECTION (1.5)(e):

8 (A) "COMMUNITY SOLAR GARDEN" HAS THE SAME MEANING AS SET
9 FORTH IN SECTION 40-2-127 (2)(b)(I)(A).

10 (B) "SUBSCRIBER" HAS THE SAME MEANING AS SET FORTH IN
11 SECTION 40-2-127 (2)(b)(II).

12 **SECTION 3.** In Colorado Revised Statutes, 39-5-104.7, **amend**
13 (2) as follows:

14 **39-5-104.7. Valuation of real and personal property that**
15 **produces alternating current electricity from a renewable energy**
16 **source.** (2) In developing the valuation procedures specified in ~~paragraph~~
17 ~~(a) of subsection (1)~~ SUBSECTION (1)(a) of this section:

18 (a) EXCEPT AS SET FORTH IN SUBSECTION (2)(b) OF THIS SECTION,
19 the administrator shall utilize the procedures adopted for determining the
20 actual value of a renewable energy facility as specified in section
21 39-4-102 (1)(e); AND

22 (b) FOR A FACILITY THAT WOULD QUALIFY AS A SOLAR ENERGY
23 FACILITY AS DEFINED IN SECTION 39-4-101 (3.5) BUT IT GENERATES AND
24 DELIVERS LESS THAN TWO MEGAWATTS OF ENERGY, THE ADMINISTRATOR
25 SHALL UTILIZE THE PROCEDURES FOR DETERMINING THE ACTUAL VALUE
26 OF A SOLAR ENERGY FACILITY AS SPECIFIED IN SECTION 39-4-102 (1.5) FOR
27 PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2020.

1 **SECTION 4.** In Colorado Revised Statutes, 39-29-106, **amend**
2 (2)(b), (3), and (4) as follows:

3 **39-29-106. Tax on the severance of coal.** (2) (b) On and after
4 July 1, 1999, BUT BEFORE JANUARY 1, 2021, no tax provided for in
5 subsection (1) of this section ~~shall be~~ IS imposed on the first three
6 hundred thousand tons of coal produced in each quarter of the taxable
7 year.

8 (3) FOR TAXABLE YEARS COMMENCING PRIOR TO JANUARY 1,
9 2021, there ~~shall be~~ IS allowed, as a credit against the tax imposed by
10 subsection (1) of this section, an amount equal to fifty percent of such tax
11 for coal produced from underground mines.

12 (4) FOR TAXABLE YEARS COMMENCING PRIOR TO JANUARY 1,
13 2021, there ~~shall be~~ IS allowed, as an additional credit against the tax
14 imposed by subsection (1) of this section, an amount equal to fifty percent
15 of such tax for the production of lignitic coal, as such coal is classified by
16 the American society for testing and materials (ASTM) in their D 388
17 standard for the classification of coals by rank.

18 **SECTION 5.** In Colorado Revised Statutes, 39-29-108, **amend**
19 (2)(b); and **add** (2)(d) as follows:

20 **39-29-108. Allocation of severance tax revenues - definitions**
21 **- repeal.** (2) (b) EXCEPT AS SET FORTH IN SUBSECTION (2)(d) OF THIS
22 SECTION, of the total gross receipts realized from the severance taxes
23 imposed on minerals and mineral fuels under the provisions of this article
24 after June 30, 2017, fifty percent shall be credited to the state severance
25 tax trust fund created by section 39-29-109, and fifty percent shall be
26 credited to the local government severance tax fund created by section
27 39-29-110.

1 (d) (I) PRIOR TO JULY 1, 2026, THE STATE TREASURER SHALL
2 CREDIT AN AMOUNT OF THE INCREASED COAL TAX THAT IS ATTRIBUTABLE
3 TO THE DISCONTINUATION OF THE EXEMPTION IN SECTION 39-29-106 (2)(b)
4 AND THE CREDITS IN SECTION 39-29-106 (3) AND (4) TO THE SUSTAINABLE
5 ENERGY TAX POLICY FUND CREATED IN SECTION 39-3-118.7 (4)(a).

6 (II) THIS SUBSECTION (2)(d) IS REPEALED, EFFECTIVE JULY 1, 2026.

7 **SECTION 6.** In Colorado Revised Statutes, 39-22-627, **amend**
8 (1)(b), (3), and (6) as follows:

9 **39-22-627. Temporary adjustment of rate of income tax -**
10 **refund of excess state revenues - authority of executive director.**

11 (1) (b) In order for the provisions of subsection (1)(a) of this section to
12 take effect, the amount of state revenues required to be refunded for the
13 specified state fiscal year must exceed the total of the amount of
14 reimbursement for property tax revenues lost as a result of the property
15 tax exemptions allowed by part 2 of article 3 of this title 39 paid by the
16 state treasurer to each county treasurer as required by section 39-3-207 (4)
17 for the property tax year that commenced during the specified state fiscal
18 year plus THE ESTIMATED AMOUNT OF THE REFUND SPECIFIED IN SECTION
19 39-3-118.7 (5)(b), PLUS the estimated amount by which state revenues
20 would be decreased as the result of a reduction in the state income tax rate
21 from four and sixty-three one-hundredths percent to four and one-half
22 percent of federal taxable income, as determined pursuant to this section.

23 (3) If one or more ballot questions are submitted to the voters at
24 a statewide election to be held in November of any given calendar year
25 that seek authorization for the state to retain and spend all or any portion
26 of the amount of excess state revenues for the state fiscal year ending
27 during said calendar year, the executive director shall not reduce the state

1 income tax rate until the results of said election are known so that the
2 state income tax rate may be reduced only if, after the results of said
3 election, the amount of excess state revenues required to be refunded for
4 the state fiscal year exceeds the total of the amount of reimbursement for
5 property tax revenues lost as a result of the property tax exemptions
6 allowed by part 2 of article 3 of this title 39 paid by the state treasurer to
7 each county treasurer as required by section 39-3-207 (4) for the property
8 tax year that commenced during the specified state fiscal year plus THE
9 ESTIMATED AMOUNT OF THE REFUND SPECIFIED IN SECTION 39-3-118.7
10 (5)(b), PLUS the estimated amount by which state revenues would be
11 decreased as a result of a reduction in the state income tax rate from four
12 and sixty-three one-hundredths percent to four and one-half percent of
13 federal taxable income pursuant to this section.

14 (6) If, based on the financial report prepared by the controller in
15 accordance with section 24-77-106.5, the controller certifies that the
16 amount of the state revenues for any state fiscal year commencing on or
17 after July 1, 2017, exceeds the limitation on state fiscal year spending
18 imposed by section 20 (7)(a) of article X of the state constitution for that
19 state fiscal year and exceeds the amount of excess state revenues that the
20 voters statewide have authorized the state to retain and spend for that
21 state fiscal year by less than the total of the amount of reimbursement for
22 property tax revenues lost as a result of the property tax exemptions
23 allowed by part 2 of article 3 of this title 39 paid by the state treasurer to
24 each county treasurer as required by section 39-3-207 (4) for the property
25 tax year that commenced during the specified state fiscal year plus THE
26 ESTIMATED AMOUNT OF THE REFUND SPECIFIED IN SECTION 39-3-118.7
27 (5)(b), PLUS the estimated amount by which state revenues would be

1 decreased as the result of a reduction in the state income tax rate from
2 four and sixty-three one-hundredths percent to four and one-half percent
3 of federal taxable income as calculated by the executive director pursuant
4 to subsection (2) of this section, then the reduction in the state income tax
5 rate allowed pursuant to subsection (1) of this section shall not be allowed
6 for the income tax year commencing during the calendar year in which
7 the state fiscal year ended.

8 **SECTION 7. In Colorado Revised Statutes, 8-83-504, amend (1)**
9 **as follows:**

10 **8-83-504. Just transition cash fund. (1) There is hereby created**
11 **in the state treasury the just transition cash fund. The fund consists of**
12 **money credited TRANSFERRED to the fund IN ACCORDANCE WITH SECTION**
13 **39-3-118.7 (4)(c) and any other money that the general assembly may**
14 **appropriate or transfer to the fund. The state treasurer shall credit all**
15 **interest and income derived from the deposit and investment of money in**
16 **the fund to the fund. Subject to annual appropriation by the general**
17 **assembly, the office may expend money from the fund for purposes**
18 **specified in this part 5, including paying for the office's direct and indirect**
19 **costs in administering this part 5.**

20 **SECTION 8. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2020 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.